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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,631	09/15/2003	Werner Patz	J&R-1120	9753
24131	7590	06/03/2004	EXAMINER	
LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480			BUECHNER, PATRICK M	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/662,631	<b>Applicant(s)</b> PATZ, WERNER	
	<b>Examiner</b> Patrick M Buechner	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.  
 4a) Of the above claim(s) 7-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4-6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 9/15/2003.
- 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group 1 in Paper No. ELC. 4/26/2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Dinkler (US 732,620).

Dinkler discloses a closeable dispensing device for dispensing a liquid from a container, comprising: a dispensing device body (15) formed with a first opening (17) for dispensing the medium from the container (1) and a second opening (23) for ventilating or venting the container (lines 26-31); an actuatable closure device (16) configured to selectively establish a communicating connection between said first opening and the container and between said second opening and the container (Figures 3 and 4); said closure device, upon being actuated for establishing a connection between said first opening and the container, first establishing a

Art Unit: 3754

communicating connection between said second opening and the container (Figure 4) and only then establishing the connection between said first opening and the container (Figure 3); and wherein the communicating connection between said second opening and the container is interrupted when the communicating connection between said first opening and the container is established (Figure 4).

The recitation in claim 2 that "the container is a drinks bottle" is a functional limitation that does not add any structure. The device of Dinkler is capable of use as a "drinks bottle" as it is designed for heavy liquids, which could include viscous substances such as creams, or liquids with high pulp contents.

Dinkler also discloses the device such that the second opening (23) is disposed such that a person opening the dispensing device using the person's mouth, is not subject to breathing in gases passing out of said second opening as the container is vented.

There is no specific structure of applicant's invention that requires opening the container with a user's mouth. If one was so inclined one could use one's mouth to operate the valve (16) of Dinkler with one's mouth and not be subject to the vented gases, as the vented gases would travel through opening (9) which would be well away from a user's mouth placed upon the valve handle (16).

#### *Allowable Subject Matter*

5. Claims 4-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3754

*Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bramming (US 2,979,238) discloses a closure for a bottle having two openings. Harris, Sr. et al. (US 3,757,981) discloses a valve body having two openings. Vos (US 3,731,855) discloses a pressurized container with a gate valve. Nagai (US 3,146,913) discloses a non-drip cap with a sliding gate valve.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick M Buechner whose telephone number is (703) 308-2602. The examiner can normally be reached on 7:00am-4:30pm M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*PB*

PB



KENNETH BOMBERG  
PRIMARY EXAMINER